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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:
USA COMMERCIAL MORTGAGE COMPANY,
Debtor.

Case No. BK-S-06-10725 LBR
Case No. BK-S-06-10726 LBR
Case No. BK-S-06-10727 LBR
Case No. BK-S-06-10728 LBR
Case No. BK-S-06-10729 LBR

In re:
USA CAPITAL REALTY ADVISORS, LLC,

Debtor

Chapter 11

In re:
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,
Debtor

Debtor.

Case No. BK-S-06-10725 LBR

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC

Debtors.

In re:
USA SECURITIES, LLC,

Debtors.

Affects:

Affects:

All Debtors

- All Debtors
- USA Commercial Mortgage Company
- USA Securities, LLC
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA First Trust Deed Fund, LLC

USA COMMERCIAL MORTGAGE COMPANY, a chapter 11 debtor, and USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, a chapter 11 debtor,

Plaintiffs

HMA Sales, LLC, a Nevada limited liability company, and
SALVATORE J. REALE, an individual.

Defendants

Plaintiffs USA Commercial Mortgage Company ("USACM") and USA Capital Diversified Trust Deed Fund, LLC ("DTDF") hereby complain against defendants and allege as follows:

JURISDICTION

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157 and 11 U.S.C. §§ 544, 548 and 550.

2. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (H) and (O).

3. This is an adversary proceeding pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure.

4. This Court has venue over this proceeding pursuant to 28 U.S.C. § 1409(a).

GENERAL ALLEGATIONS

5. Defendant HMA Sales, LLC (“HMA”) is a Nevada limited liability company doing business within this judicial district.

6. Defendant Salvatore J. Reale is an individual residing within this judicial district.

7. USACM and DTDF are creditors of HMA.

8. HMA is owned by USA Investment Partners, LLC (“USAIP”) and Allen Abolafia. USAIP is the majority owner and manager of HMA and thereby exercises sole control and management over the affairs of HMA.

9. The majority interest in USAIP is owned by Joseph Milanowski (“Milansowski”) and Tom Hantges (“Hantges”).

10. HMA is the owner of the Royal Hotel, a property located at 99 Convention Center Drive, Las Vegas, California (the “Royal Hotel”) and identified as Clark County Assessor Parcel Nos. 162-09-812-002 and 162-09-812-003.

11. Upon information and belief, HMA has entered into a contract to sell the Royal Hotel for approximately \$29 million.

12. Hantges and Milanowski are the majority owners of USACM.

13. USACM is in the business of arranging and servicing loans.

1 14. DTDF is a fund created in 2000 by Hantges and Milanowski and/or USACM
2 for the purpose of aggregating investment funds of investors to be used to invest in real
3 property secured loans funded in whole or in part by DTDF.

4 15. Until the chapter 11 filings by USACM and DTDF in April, 2006, Hantges
5 and Milanowski exercised dominion and control over both USACM and DTDF.

6 16. DTDF and USACM entered into a loan servicing agreement whereby
7 USACM was to arrange for and service loans for DTDF.

8 17. Commencing in 2003, Hantges and Milanowski caused DTDF to advance
9 substantial monies to USAIP. Many of those advances were made indirectly through an
10 entity known as 10-90, Inc. and were booked by DTDF/USACM/Milanowski/Hantges as a
11 loan made by DTDF to 10-90, Inc. (the "10-90 Loan"). Eventually, DTDF, USAIP and
12 10-90, Inc. agreed that 10-90, Inc. would be removed from the transaction as a borrower of
13 DTDF and a lender to USAIP and thereafter, USAIP became the direct borrower to DTDF
14 in the 10-90 Loan.

15 18. The structure of the 10-90 Loan was such that USAIP was to grant to DTDF
16 a lien upon and security interest in the assets acquired and funded with, and investments
17 made with, advances on the 10-90 Loan.

18 19. Upon information and belief, the 10-90 Loan was a mere fiction and
19 subterfuge employed by Hantges and Milanowski utilized as part of a scheme whereby
20 they utilized the monies of the DTDF investors for their own speculative real estate
21 development activities, rather than funding non-insider loans secured by first deeds of trust
22 on real property as promised in the DTDF prospectus.

23 20. Approximately \$14 million of DTDF funds taken by USAIP, Milanowski
24 and Hantges ostensibly as advances on the 10-90 Loan were utilized by USAIP in
25 connection with the Royal Hotel owned by HMA, both to fund the purchase of the Royal
26 Hotel and to fund the operations and improvements to the Royal Hotel.

27 21. USAIP did not grant to DTDF a lien upon or security interest in the Royal
28 Hotel or USAIP's interests in HMA at the time such advances were made by DTDF to

1 USAIP and invested by USAIP in the Royal Hotel.

2 22. After the commencement of the chapter 11 cases of DTDF and USACM,
 3 DTDF and USACM, through Tom Allison of Mesirow Interim Financial Management
 4 (“Mr. Allison”), negotiated with Mr. Milanowski on behalf of USAIP, for a promissory
 5 note in the amount of \$58,374,918.81 to evidence certain obligations appearing on the
 6 books of USACM owing by USAIP (the “\$58 Million USAIP Note”) and a security
 7 agreement to secure various obligations owing by USAIP to the debtors, including
 8 USACM and DTDF (the “USAIP Security Agreement”). The \$58 Million USAIP Note and
 9 the USAIP Security Agreement are both dated as of May 31, 2006, and were approved by
 10 order of this Court entered on the docket in the USACM case on July 24, 2006.

11 23. The obligations secured under the USAIP Security Agreement include the
 12 \$58 Million USAIP Note and the 10-90 Loan.

13 24. One of the assets pledged by USAIP under the USAIP Security Agreement
 14 was the LLC member interest of USAIP in HMA. Thus, both DTDF and USACM have a
 15 direct interest in maximizing the net sales proceeds of the Royal Hotel to be received by
 16 HMA.

17 25. Unbeknownst to Mr. Allison and the debtors, at the time that Milanowski
 18 was negotiating on behalf of USAIP to pledge USAIP’s LLC member interest in HMA to
 19 the debtors, including USACM and DTDF, Milanowski was taking other actions that
 20 adversely and materially affected the value of that interest to DTDF and USACM. On or
 21 about May 5, 2006, Milanowski, on behalf of HMA, granted a real property lien upon the
 22 Royal Hotel by executing that certain Deed of Trust, Assignment of Rents Security
 23 Agreement and Fixture Filing in favor of Salvatore J. Reale, as the Trustee of the Salvatore
 24 J. Reale Revocable Living Trust Dated November 15, 2004 (“Reale”) which was recorded
 25 with the Clark County Recorder on May 5, 2006, as document number 20060505-0003127
 26 (the “Reale Deed of Trust”).

27 26. The Reale Deed of Trust executed on behalf of HMA states that the
 28 obligation secured is a “Promissory Note dated December 1, 2004, as amended by Thomas

1 A. Hantges and Joseph D. Milanowski (collectively, the “Borrower”), which presently has
2 an unpaid balance of Nine Million Eight Hundred Thousand Dollars (\$9,800,000.00) plus
3 interest . . . “ (the “Reale Note”). Thus, the Reale Note is the personal obligation of
4 Milanowski and Hantges and is not the obligation of HMA.

5 27. Upon information and belief, HMA received no consideration whatsoever for
6 assuming the liability of the Reale Note by pledging the Royal Hotel as collateral therefor.

7 28. At no time during the negotiations with Mr. Allison, did Milanowski inform
8 Mr. Allison that the Royal Hotel had been pledged to Reale to secure the Reale Note.

FIRST CLAIM FOR RELIEF (Equitable Lien)

1 29. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 28 above as if
2 fully set forth herein.

3 30. USAIP was contractually bound to provide DTDF with a lien upon and security
4 interest in the assets acquired and funded with, and investments funded with, advances on the 10-
5 90 Loan, including the Royal Hotel.

31. DTDF is entitled to an equitable lien upon the Royal Hotel.

SECOND CLAIM FOR RELIEF (Constructive Trust)

9 32. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 31 above as if
0 fully set forth herein.

21 33. USAIP, HMA, Hantges and Milanowski, among others, engaged in a scheme to
22 defraud DTDF and the investors in DTDF by taking and utilizing the monies of DTDF to fund
23 their own speculative real estate investments, contrary to the promises of the DTDF prospectus
24 that informed the DTDF investors that DTDF monies would be used to fund loans secured by first
25 deeds of trust on real estate. The 10-90 Loan was a subterfuge for these direct withdrawals of
26 monies from DTDF to fund insider real estate speculations, including the Royal Hotel, and funds
27 advanced under the fiction of the 10-90 Loan were utilized to fund the purchase, operations and
28 improvements to the Royal Hotel.

34. As a result, all assets and investments purchased with and funded with DTDF monies should be imposed with a constructive trust in favor of DTDF, including HMA's ownership of the Royal Hotel.

THIRD CLAIM FOR RELIEF
(Avoidance of a Fraudulent Transfer)

35. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 34 above as if fully set forth herein.

36. Title to the Royal Hotel is encumbered with the Reale Deed of Trust.

37. HMA received less than reasonably equivalent value in return for the pledge of the Royal Hotel to Reale and HMA was insolvent at the time of the transfer or became insolvent as a result of the transfer.

38. The transfer accomplished by the Reale Deed of Trust was made with the actual intent to hinder, delay or defraud creditors, including USACM and DTDF.

FOURTH CLAIM FOR RELIEF (Injunction)

39. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 38 above as if fully set forth herein.

40. As a result of the foregoing, HMA and anyone acting in concert with HMA should be enjoined from taking any further action to dispose of the Royal Hotel, or any interest therein, unless and until the claims of USACM and DTDF, as alleged above, are adequately provided for. HMA and such other entities should further be enjoined from causing HMA to incur any further obligations of others as to which HMA is not presently obligated.

41. Without such an injunction, USACM and DTDF would suffer irreparable injury in that, among other things, USACM and DTDF would need to commence further litigation to pursue recovery of monies paid out to third parties, including Reale, upon a disposition of the Royal Hotel and the eventual recovery in such actions is uncertain.

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**FIFTH CLAIM FOR RELIEF
(Appointment of a Receiver)**

42. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 41 above as if fully set forth herein.

43. In order to preserve the status quo with respect to the Royal Hotel, and in order to avoid the dissipation and/or loss of value represented by the Royal Hotel, USACM and DTDF are entitled to the appointment of a receiver for HMA and/or the Royal Hotel.

PRAYER FOR RELIEF

THEREFORE, USACM and DTDF pray as follows:

A. For a judgment that the title to the Royal Hotel is encumbered by an equitable lien in favor of DTDF.

B. For a judgment that title to the Royal Hotel is imbued with a constructive trust in favor of DTDF

C. For a judgment that the Reale Note and the Reale Deed of Trust constitute fraudulent transfers and that title to the Royal Hotel be reformed to remove the Reale Deed of Trust from such title.

D. For a judgment enjoining HMA or anyone acting in concert with HMA from disposing of the Royal Hotel or any interest therein, or from further obligating HMA for the obligations of others.

E. For a judgment appointing a receiver for the Royal Hotel and/or HMA.

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1 F. For a judgment providing that the claims of DTDF and USACM shall be satisfied
2 from the sale proceeds of the Royal Hotel or any other property of HMA.

3 G. For such further relief that this Court deems to be just and proper.

4 Dated: December 25, 2006

5 /s/ Lenard E. Schwartzer
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ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)	
PLAINTIFF USA Commercial Mortgage Company and USA Capital Diversified Trust Deed Fund, LLC		DEFENDANT HMA Sales, LLC, a Nevada limited liability company, and SALVATORE J. REALE, an individual	
ATTORNEYS (Firm Name, Address, and Telephone No.) Lenard E. Schwartzer, Esq. Jeanette E. McPherson, Esq. Schwartzer & McPherson Law Firm 2850 South Jones Blvd., Suite 1 Las Vegas NV 89146 (702) 228-7590		ATTORNEYS (If Known)	
PARTY (Check one box only) <input type="checkbox"/> 1 U.S. PLAINTIFF <input type="checkbox"/> 2 U.S. DEFENDANT <input checked="" type="checkbox"/> 3 U.S. NOT A PARTY			
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) 11 U.S.C. §544, 548 and §550 NRS 112.180			
NATURE OF SUIT (Check the one most appropriate box only.)			
<input checked="" type="checkbox"/> 454 To Recover Money or Property <input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11 or Chap. 13 Plan <input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing causes of action <input type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property <input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. §523 <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court <input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property <input type="checkbox"/> 434 To obtain an injunction or other equitable relief <input type="checkbox"/> 498 Other (specify) <input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. §727 <input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan			
ORIGIN OF PROCEEDINGS (Check one box only.)	<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed Proceeding <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another Bankruptcy Court	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	
DEMAND	NEAREST THOUSAND \$29,000,000.00	OTHER RELIEF SOUGHT	<input type="checkbox"/> JURY DEMAND
BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR USA Commercial Mortgage Company USA Capital Realty Advisors, LLC USA Capital Diversified Trust Deed Fund, LLC USA First Trust Deed Fund, LLC USA Securities, LLC		BANKRUPTCY CASE NO. BK-S-06-10725 LBR BK-S-06-10726 LBR BK-S-06-10727 LBR BK-S-06-10728 LBR BK-S-06-10729 LBR Jointly Administered Under Case No. BK-S-06-10725 LBR	
DISTRICT IN WHICH CASE IS PENDING NEVADA		DIVISIONAL OFFICE LAS VEGAS	NAME OF JUDGE HONORABLE LINDA B. RIEGLE
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF		DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT		DIVISIONAL OFFICE	NAME OF JUDGE
FILING FEE (Check one box only.)		<input checked="" type="checkbox"/> FEE ATTACHED <input type="checkbox"/> FEE NOT REQUIRED <input type="checkbox"/> FEE IS DEFERRED	
DATE 12/25/2006		PRINT NAME Lenard E. Schwartzer, Esq.	
		SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ Lenard E. Schwartzer	